United Nations Convention on the Law of the Sea SPLOS/175

Meeting of States Parties

Distr. : General
26 March 2008

Original: English

Eighteenth Meeting
New York, 13-20 June 2008

Report on budgetary matters for the financial periods 2005-2006 and 2007-2008

Presented by the Registrar

I. Surrender of cash surplus for the financial period 2005-2006

A. Introduction

1. In June 2007, the seventeenth Meeting of States Parties took note of the report of the external auditor for the financial period 2005-2006 (SPLOS/153), which had been submitted to the seventeenth Meeting by the Tribunal (see SPLOS/164, para. 31). According to the report of the external auditor, the excess of income over expenditures as at 31 December 2006 amounted to €2,605,614. As explained in the report on budgetary matters for the period 2005-2006 (see SPLOS/154, para. 4), the performance could be explained by the fact that no new cases had been submitted during 2005-2006, and therefore substantial savings had been achieved under "Case-related costs". In addition, there had been savings with respect to staff costs, owing to vacant positions in the Registry during the reporting period. It was also noted that, if the case-related costs had been excluded, the performance rate for other costs would have amounted to 99.67 per cent.

B. Provisional cash surplus

2. Under regulation 4.4 of the Financial Regulations, the provisional cash surplus is determined by establishing the balance between credits (assessed contributions actually received and miscellaneous income received) and charges (disbursements against appropriations and provisions for unliquidated obligations). The balance of €2,605,614 reflects the excess of income over expenditures for the financial period 2005-2006.

3. Pursuant to regulation 4.3 of the Financial Regulations, the amount of unpaid contributions should be deducted from this balance. As this is the first time that the provisions of the Financial Regulations concerning the surrender of a cash surplus

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are being applied, the Tribunal must take into account the amount of unpaid contributions from previous financial periods.

4. On this basis, the provisional cash surplus for the financial period 2005-2006 was determined as being €753,082. This amount is contained in the audit report of the financial statement of the Tribunal for the financial period 2005-2006 (see SPLOS/153):

Credit (€15 999 244) — charges (€13 393 630) :	€2 605 614
Unpaid contributions:	-€1 852 532
Provisional cash surplus:	€753 082

C. Cash surplus

5. Under regulation 4.4 of the Financial Regulations, the cash surplus is determined by crediting to the provisional cash surplus any arrears of prior periods' contributions received during the financial period and any savings from the provisions made for unliquidated obligations for the financial period. It should be noted that an amount of €351,899 corresponding to the supplementary budget for 2005-2006 has already been surrendered and deducted from the assessed contributions of the States Parties in accordance with the decision taken by the seventeenth Meeting of States Parties (see para. 10). On this basis, the cash surplus as determined by the Registrar amounted to €1,232,340 as at 31 December 2007:

Provisional cash surplus (€753,082) + arrears of prior periods' contributions received in 2007 (€723,997) + savings from the provisions made from unliquidated obligations (€107,160) – surrender of the 2005-2006 supplementary budget (SPLOS/161) (€351,899) = cash surplus (€1,232,340)

6. The cash surplus, as determined in paragraph 5, was reviewed by the auditor on 28 February 2008. The auditor certified that the cash surplus for the financial period 2005-2006 as at 31 December 2007 amounted to €1,232,340 (see annex I).

D. Surrender of cash surplus

7. Under regulation 4.5, the cash surplus will be surrendered as follows:

(a) *Apportionment of cash surplus*

The cash surplus, determined as outlined above, will be apportioned among States Parties in proportion to the contributions determined for the financial period 2005-2006, to which the surplus relates.

(b) *Surrender of cash surplus*

The cash surplus for the financial period 2005-2006 thus apportioned to States Parties will:

(i) Be surrendered, provided that their contribution for the financial period 2005-2006 has been paid in full; and thereafter

(ii) Be applied to liquidate, in whole or in part, any arrears in contributions.

(c) *Retention of cash surplus apportioned but not surrendered*

Any cash surplus apportioned but not surrendered owing to non-payment or partial payment of the contribution for the financial period in question will be retained by the Registrar until such time as the contribution for that financial period is paid in full.

8. In accordance with regulation 4.5 of the Financial Regulations, the Tribunal decided on 14 March 2008 that the cash surplus in the amount of €1,232,340 would be surrendered and deducted from the contributions of States Parties for 2009 and for earlier financial periods where applicable.

II. Provisional performance report for 2007

9. In June 2006, the sixteenth Meeting of States Parties approved a budgetary amount of €17,214,700 for the financial period 2007-2008 (SPLOS/145, para. 1).

10. Attached as annex II is the performance report for the year 2007 which is provisional since it concerns the first year (2007) of the 2007-2008 biennium budget.

11. As shown in the provisional performance report for 2007, the total expenditure for that year stands provisionally at €7,414,250, representing 86.33 per cent of the amount of appropriations approved for 2007 (€8,588,298). The underperformance can largely be explained by the savings, amounting to €672,008, under "Case-related costs". These savings were achieved owing to the fact that two cases, namely Case No. 14 ("*Hoshinmaru*") and Case No. 15 ("*Tomimaru*"), were submitted simultaneously in July 2007 and were dealt with within a period of one month in accordance with the relevant provisions of the Rules of the Tribunal (instead of two months had the cases been filed separately). In addition, savings amounting to €231,658 were made with respect to staff costs owing to vacant positions in the Registry during the reporting period. It may be noted that, if the case-related costs (€1,201,350) were excluded, the performance rate for other costs would be 93.20 per cent.

III. Report on action taken pursuant to the decisions on budgetary matters for the financial period 2007-2008 taken by the sixteenth and seventeenth Meetings of States Parties

A. Surrender of savings from 2002

12. The sixteenth Meeting of States Parties decided on 23 June 2006: that an amount of €312,684 from the 2002 savings corresponding to the additional appropriations for 2005 would be surrendered and deducted from the assessed contributions of the States Parties in accordance with regulation 4.5 of the Financial Regulations of the Tribunal (SPLOS/146).

13. In accordance with the above decision, an amount of €312,684 was surrendered and deducted from the contributions of States Parties for 2007 and for earlier financial periods where applicable.

B. Surrender of savings from 2002 and 2004 and from the supplementary budget for 2005-2006

14. The seventeenth Meeting of States Parties decided on 26 June 2007 (SPLOS/161):

(a) That an amount of €65,816 from the 2002 savings and an amount of €208,670 from the 2004 savings would be surrendered and deducted from the assessed contributions of the States Parties for 2008 in accordance with regulation 4.5 of the Financial Regulations of the Tribunal;

(b) That an amount of €351,899, corresponding to the supplementary budget approved by the Meeting of States Parties, would be surrendered and deducted from the assessed contributions of the States Parties for 2008 in accordance with regulation 4.5 of the Financial Regulations of the Tribunal (SPLOS/161).

15. In accordance with the above decisions, an amount of €626,385 was deducted from the contributions of States Parties for 2008 and for earlier financial periods where applicable.

IV. Overexpenditures in 2007

16. On the basis of the approved budget for the financial period 2007-2008, the budget line "Reimbursement of national taxes" under section 2, "Staff costs", in part I, "Recurrent expenditure", was overrun in 2007 owing to an increase in the national income tax liabilities of two staff members who were liable for national income tax in 2007. The overrun amounted to €10,563.

17. Since no staff members will be liable for national income tax in 2008, it is expected that this overexpenditure may be financed by using the savings in the same budget line for 2008, subject to final expenditure established as at 31 December 2008.

V. Report on action taken pursuant to the Financial Regulations of the Tribunal

A. Investment of the funds of the Tribunal

18. In respect of the investment of funds of the Tribunal, regulation 9 of the Financial Regulations of the Tribunal stipulates the following:

> "9.1 The Registrar may make prudent short-term investments of moneys not needed for immediate requirements and shall inform the Tribunal and the Meeting of States Parties periodically of such investments.
>
> "9.2 Income derived from investments shall be credited to miscellaneous income or as provided in the rules relating to each fund or account."

19. During 2007, the Tribunal's funds were kept in Chase Bank and Deutsche Bank in United States dollars and euros as short-term investments, which are investments made for less than 12 months according to rule 109.1 of the Financial Rules of the Tribunal. The funds yielded interest amounting to €139,683 during

2007. This earned interest has been credited as miscellaneous income in accordance with regulation 9.2 of the Financial Regulations of the Tribunal.

B. The Korea International Cooperation Agency trust fund

20. The Korea International Cooperation Agency (KOICA) offered to provide a grant of US$ 150,000 pursuant to a memorandum of understanding signed between the Tribunal and KOICA on 9 March 2004. Its object is to finance the expenses of participants from developing countries in the Tribunal's internship programme.

21. In accordance with regulation 6.5 of the Financial Regulations of the Tribunal, a trust fund was subsequently established and a special euro bank account named "KOICA grant" was set up with Deutsche Bank for this purpose. When the funds, amounting to $150,000, were received from KOICA in March 2004 they were converted into €120,600 on the basis of the exchange rate of 0.804 fixed by the United Nations for March 2004.

22. In March 2006, the Tribunal received from KOICA its second contribution to the KOICA trust fund in the amount of $100,000. This amount was converted into €84,400 on the basis of the exchange rate of 0.844 fixed by the United Nations for March 2006. Following the signing of a memorandum of understanding between the Tribunal and KOICA, a further amount of €213,645 was paid to the Tribunal in February 2007 in order to finance the internship programme of the Tribunal, the organization of regional workshops and the participation of students from developing countries in the summer academy organized by the International Foundation for the Law of the Sea.

23. The performance of the KOICA grant as at 31 December 2007, which is to be reported to the Meeting of States Parties in accordance with regulation 6.5 of the Financial Regulations of the Tribunal, is as follows:

Performance of the grant of the Korea International Cooperation Agency in euros

Opening balance	120 600.00
28 March 2006 — contribution	84 400.00
27 February 2007 — contribution	213 645.00
Interest income	1 165.00
Total	**419 810.00**
Expenditure on participants and authorized activity	-338 316.00
Bank charges	-2 275.00
Account receivable	-1 994.00
Gain on exchange	395.00
Bank balance	**77 620.00**
Unliquidated obligations	-11 544.00
Available balance	**66 076.00**

C. Nippon Foundation trust fund

24. In March 2007, the Tribunal and the Nippon Foundation signed "The Nippon Foundation grant agreement". Pursuant to the agreement, the Nippon Foundation agreed to contribute an amount of €200,000 to "The Nippon Foundation — The International Tribunal for the Law of the Sea Capacity-Building and Training Programme on Dispute Settlement under the United Nations Convention on the Law of the Sea".

25. In accordance with regulation 6.5 of the Financial Regulations of the Tribunal, a trust fund was subsequently established and a special euro bank account named "Nippon Foundation grant" was set up with Deutsche Bank. The purpose of the grant is to finance the expenses of participants from developing countries in the aforementioned programme. The performance of the Nippon Foundation grant as at 31 December 2007, which is to be reported to the Meeting of States Parties in accordance with regulation 6.5 of the Financial Regulations of the Tribunal, is as follows:

Performance of the Nippon Foundation grant in euros

Opening balance	200 000.00
Interest income	591.00
Total	**200 591.00**
Expenditure on participants and authorized activity	-85 297.00
Bank charges	-160.00
Account receivable	1 555.00
Gain on exchange	53.00
Bank balance	**116 742.00**
Unliquidated obligations	0.00
Available balance	**116 742.00**

VI. Other matters

A. Introduction

26. In June 2005, the fifteenth Meeting of States Parties decided to approve an adjustment of the maximum annual remuneration of the members of the Tribunal to $170,080 in accordance with General Assembly resolution 59/282. This decision was taken as an interim measure and pending a decision by States Parties based upon a report by the Registrar, taking into account the Secretary-General's report submitted to the sixty-first session of the General Assembly (SPLOS/132).

B. New salary system for judges at the International Court of Justice, the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda

27. On the basis of the Secretary-General's report (A/61/554 dated 2 November 2006), on 4 April 2007 the General Assembly adopted resolution 61/262 concerning the conditions of service and compensation for judges at international courts and tribunals.

28. In this resolution, in respect of the salary of judges at the International Court of Justice (ICJ), judges and ad litem judges at the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), the General Assembly decided to apply a post adjustment multiplier to the annual net base salary of judges, while maintaining the level of annual salary for the current members of ICJ, ICTY and ICTR. In the same resolution, the General Assembly also requested the Secretary-General to study options for a revision of the pension schemes for the judges at ICJ, ICTY and ICTR.

29. The new salary system provided for in resolution 61/262 was commented on by ICJ, which pointed out that the system would create inequality among members of the Court, between members of the Court and ad hoc judges, and also among ad hoc judges. ICJ argued that such an inequality would not be in conformity with the relevant provisions of the Statute of the Court and the Rules of Court providing for complete equality among its members and between members of the Court and ad hoc judges. ICJ then proposed options to remedy this situation.

30. The Secretary-General submitted to the sixty-second session of the General Assembly his report on the conditions of service and compensation for members of ICJ and judges of ICTY and ICTR (A/62/538 dated 8 November 2007). This report contains the Court's comments on the new salary system adopted in resolution 61/262 (see A/62/538, paras. 30-66 and annex II) and its recommendations (see A/62/538, paras. 67-72) as well as the Secretary-General's proposals to remedy the difficulties raised by ICJ (see A/62/538, paras. 73-77). The Secretary-General's report is expected to be considered by the Fifth Committee during its resumed session in 2008 and the General Assembly will take a decision on the matter on that basis.

C. Action to be taken by the Tribunal

31. The Tribunal will continue to follow this question and will report to the next session of the Meeting of States Parties on any developments.

Annex I

BDO

BDO Deutsche Warentreuhand
Aktiengesellschaft
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To
Mr. Philippe Gautier
Registrar of the
International Tribunal for the Law of the Sea
Am Internationalen Seegerichtshof 1
22609 Hamburg

Lübeck, 28 February 2008

Contact: Dirk Beecker
Personal e-mail: dirk.beecker@bdo.de

Certification of the cash surplus for the financial period 2005/2006 of the International Tribunal for the Law of the Sea

Dear Mr. Gautier,

the International Tribunal for the Law of the Sea (referred to as the "Tribunal" in the following) assigned us to examine the cash surplus of the Tribunal for the financial period 2005/2006.

The determination of the cash surplus according to the Financial Regulations of the Tribunal is the responsibility of the Registrar of the Tribunal. Our responsibility is to examine if the cash surplus is determined according to the Financial Regulations of the Tribunal.

Based on our examination the attached cash surplus of the Tribunal for the financial period 2005/2006 (Appendix I) amount to € 1,232,340 and was determined in conformity with the Financial Regulations of the Tribunal.

Kaiserstadt LÜBECK

Berlin Bielefeld Bonn Bremen Bremerhaven Dortmund Dresden Düsseldorf Erfurt Essen Flensburg Frankfurt am Main Freiburg Hamburg Hannover Kassel Kiel Koblenz Köln Leipzig Lübeck Magdeburg München Rostock Stuttgart Lauterburg Wiesbaden

Vorsitzender des Aufsichtsrats: Friedrich T. Ziegler
Vorstand: WP StB Dr. Christian Dychehoff (Sprecher) WP StB Dr. Werner Jacob WP StB Dr. Holger Otte WP StB Dr. Arno Probst WP StB Uwe Ritzmann WP StB Michael Reinartz WP StB Dr. Dirk Rosenbaum WP StB Roland Sohl, jr. WP StB Klaus Schumacher
Sitz: WP Hartwig Fleischer WP StB Kai Hicke Rauscher
Sitz der Gesellschaft: Hamburg Amtsgericht Hamburg HR B 1161

BDO

For the performance of the assignment and our responsibility - including those to third parties - the general terms of assignment for auditors and audit companies as of 1 January 2002 as well as the special conditions for the increase of liability in connection with the general terms of assignment are applicable. These terms are attached in Appendix II.

Yours sincerely,

BDO Deutsche Warentreuhand
Aktiengesellschaft
Wirtschaftsprüfungsgesellschaft

(Beecker)
Wirtschaftsprüfer

ppa. Wiesing-Weikbarth)
Wirtschaftsprüferin

Appendices

Appendix I: Cash Surplus of the International Tribunal for the Law of the Sea for the financial period 2005/2006

Appendix II: General Engagement Terms for Wirtschaftsprüfer (German Certified Auditors) and Wirtschaftsprüfungsgesellschaften (German Certified Audit Firms) dated 1 January 2002

Special Conditions for Increased Liability within the General Engagement Terms dated 1 January 2002.

Appendix I

Cash surplus of the International Tribunal for the Law of the Sea for the financial period 2005-2006

Provisional cash surplus, 31 December 2006	
Excess of income over expenditure 2005-2006	2,605,614
Contributions receivable from states parties	-1,852,532
Provisional cash surplus 2005-2006	**753,082**
Cash surplus, 31 December 2007	
Surrender of savings in accornace with SPLOS/161	-351,899
Prior periods' contributions received in 2007	723,997
Savings from 2005-2006 obligations	107,160
Cash surplus 2005-2006, 31 December 2007	**1,232,340**

Appendix II[a]

General engagement terms for Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften

[German Public Auditors and Public Audit Firms] as of 1 January 2002

1. Scope

1. These engagement terms are applicable to contracts between Wirtschaftsprüfer [German Public Auditors] or Wirtschaftsprüfungsgesellschaften [German Public Audit Firms] (hereinafter collectively referred to as the "Wirtschaftsprüfer") and their clients for audits, consulting and other engagements to the extent that something else has not been expressly agreed to in writing or is not compulsory due to legal requirements.

2. If, in an individual case, as an exception contractual relations have also been established between the Wirtschaftsprüfer and persons other than the client, the provisions of No's below also apply to such third parties.

2. Scope and performance of the engagement

1. Subject of the Wirtschaftsprüfer's engagement is the performance of agreed services — not a particular economic result. The engagement is performed in accordance with the Grundsätze ordnungsmäBlger Berufsausübung [Standards of Proper Professional Conduct]. The Wirtschaftsprüfer is entitled to use qualified persons to conduct the engagement.

2. The application of foreign law requires — except for financial attestation engagements — an express written agreement.

3. The engagement does not extend — to the extent it is not directed thereto — to an examination of the issue of whether the requirements of tax law or special regulations, such as, for example, laws on price controls, laws limiting competition and Bewirtschaftungsrecht [laws controlling certain aspects of specific business operations] were observed; he same applies to the determinations as to whether subsidies, allowances or other benefits may be claimed. The performance of an engagement encompasses auditing procedures aimed at the detection of the defalcation of books and records and other irregularities only if during the conduct of audits grounds therefor arise or if this has been expressly agreed to in writing.

4. If the legal position changes subsequent to the issuance of the final professional statement, the Wirtschaftsprüfer is not obliged to inform the client of changes or any consequences resulting therefrom.

[a] This is an English translation of the German text, which is the sole authoritative version. Translators notes are in square brackets. Previously issued in document SPLOS/153.

3. The client's duty to inform

1. The client must ensure that the Wirtschaftsprüfer — even without his special request — is provided, on a timely basis, with all supporting documents and records required for and is informed of all events and circumstances which may be significant to the performance of the engagement. This also applies to those supporting documents and records, events and circumstances which first become known during the Wirtschaftsprüfer's work.

2. Upon the Wirtschaftsprüfer's request, the client must confirm in a written statement drafted by the Wirtschaftsprüfer that the supporting documents and records and the information and explanations provided are complete.

4. Ensuring independence

The client guarantees to refrain from everything which may endanger the independence of the Wirtschaftsprüfer's staff. This particularly applies to offers of employment and offers to undertake engagements on one's own account.

5. Reporting and verbal information

If the Wirtschaftsprüfer is required to present the results of his work in writing, only that written presentation is authoritative. For audit engagements the long-form report should be submitted in writing to the extent that nothing else has been agreed to. Verbal statements and information provided by the Wirtschaftsprüfer's staff beyond the engagement agreed to are never binding.

6. Protection of the Wirtschaftsprüfer's intellectual property

The client guarantees that expert opinions, organizational charts, drafts, sketches, schedules and calculations — especially quantity and cost computations — prepared by the Wirtschaftsprüfer within the scope of the engagement will be used only for his own purposes.

7. Transmission of the Wirtschaftsprüfer's professional statement

1. The transmission of a Wirtschaftsprüfer's professional statements (long-form reports, expert opinions and the like) to a third party requires the Wirtschaftsprüfer's written consent to the extent that the permission to transmit to a certain third party does not result from the engagement terms.

The Wirtschaftsprüfer is liable (within the limits of No. 9) towards third parties only if the prerequisites of the first sentence are given.

2. The use of the Wirtschaftsprüfer's professional statements for promotional purposes is not permitted; an infringement entitles the Wirtschaftsprüfer to immediately cancel all engagements not yet conducted for the client.

8. Correction of deficiencies

1. Where there are deficiencies, the client is entitled to subsequent fulfilment [of the contract]. The client may demand a reduction in fees or the cancellation of the contract only for the failure to subsequently fulfil [the contract]; if the engagement was awarded by a person carrying on a commercial business as part of that commercial business, a government-owned fund under public law or a special

government-owned legal person under public law, the client may demand the cancellation of the contract only if the services rendered are of no interest to him due to the failure to subsequently fulfil [the contract]. No. 9 applies to the extent that claims for damages exist beyond this.

2. The client must assert his claim for the correction of deficiencies in writing without delay. Claims pursuant to the first paragraph not arising from an intentional tort cease to be enforceable one year after the commencement of the statutory time limit for enforcement.

3. Obvious deficiencies, such as typing and arithmetical errors and formelle Mängel [deficiencies associated with technicalities] contained in a Wirtschaftsprüfer's professional statements (long-form reports, expert opinions and the like) may be corrected — and also be applicable versus third parties — by the Wirtschaftsprüfer at any time. Errors which may call into question the conclusions contained in the Wirtschaftsprüfer's professional statements entitle the Wirtschaftsprüfer to withdraw — also versus third parties — such statements. In the cases noted the Wirtschaftsprüfer should first hear the client, if possible.

9. Liability

1. *The liability limitation of§ ["Article"] 323 (2) ["paragraph 2"] HGB ["Handelsgesetzbuch": German Commercial Code] applies to statutory audits required by law.*

2. *Liability for negligence; An individual case of damages*

If neither No. 1 is applicable nor a regulation exists in an individual case, pursuant to § 54a (1) No. 2 WPO ["Wirtschaftsprüferordnung": Law regulating the Profession of Wirtschaftsprüfer] the liability of the Wirtschaftsprüfer for claims of compensatory damages of *any* kind — except for damages resulting from injury to life, body or health — for an individual case of damages resulting from negligence is limited to €4 million; this also applies if liability to a person other than the client should be established. An individual case of damages also exists in relation to a uniform damage arising from a number of breaches of duty. The individual case of damages encompasses all consequences from a breach of duty without taking into account whether the damages occurred in one year or in a number of successive years. In this case multiple acts or omissions of acts based on a similar source of error or on a source of error of an equivalent nature are deemed to be a uniform breach of duty if the matters in question are legally or economically connected to one another. In this event the claim against the Wirtschaftsprüfer is limited to €5 million. The limitation to the fivefold of the minimum amount insured does not apply to compulsory audits required by law.

3. *Preclusive deadlines*

A compensatory damages claim may only be lodged within a preclusive deadline of one year of the rightful claimant having become aware of the damage and of the event giving rise to the claim — at the very latest, however, within five years subsequent to the event giving rise to the claim. The claim expires if legal action is not taken within a six-month deadline subsequent to the written refusal of acceptance of the indemnity and the client was informed of this consequence.

The right to assert the bar of the preclusive deadline remains unaffected. Sentences 1 to 3 also apply to legally required audits with statutory liability limits.

10. Supplementary provisions for audit engagements

1. A subsequent amendment or abridgement of the financial statements or management report audited by a Wirtschaftsprüfer and accompanied by an auditor's report requires the written consent of the Wirtschaftsprüfer even if these documents are not published. If the Wirtschaftsprüfer has not issued an auditor's report, a reference to the audit conducted by the Wirtschaftsprüfer in the management report or elsewhere specified for the general public is permitted only with the Wirtschaftsprüfer's written consent and using the wording authorized by him.

2. If the Wirtschaftsprüfer revokes the auditor's report, it may no longer be used. If the client has already made use of the auditor's report, he must announce its revocation upon the Wirtschaftsprüfer's request.

3. The client has a right to 5 copies of long-form report. Additional copies will be charged for separately.

11. Supplementary provisions for assistance with tax matters

1. When advising on an individual tax issue as well as when furnishing continuous tax advice, the Wirtschaftsprüfer is entitled to assume that the facts provided by the client — especially numerical disclosures — are correct and complete; this also applies to bookkeeping engagements. Nevertheless, he is obliged to inform the client of any errors he has discovered.

2. The tax consulting engagement does not encompass procedures required to meet deadlines, unless the Wirtschaftsprüfer has explicitly accepted the engagement for this. In this event the client must provide the Wirtschaftsprüfer, on a timely basis, all supporting documents and records — especially tax assessments — material to meeting the deadlines, so that the Wirtschaftsprüfer has an appropriate time period available to work therewith.

3. In the absence of other written agreements, continuous tax advice encompasses the following work during the contract period:

(a) preparation of annual tax returns for income tax, corporation tax and business tax, as well as net worth tax returns on the basis of the annual financial statements and other schedules and evidence required for tax purposes to be submitted by the client

(b) examination of tax assessments in relation to the taxes mentioned in (a)

(c) negotiations with tax authorities in connection with the returns and assessments mentioned in (a) and (b)

(d) participation in tax audits and evaluation of the results of tax audits with respect to the taxes mentioned in (a)

(e) participation in einspruchs-und Beschwerdeverfahren [appeals and complaint procedures] with respect to the taxes mentioned in (a).

In the aforementioned work the Wirtschaftsprüfer takes material published legal decisions and administrative interpretations into account.

4. If the Wirtschaftsprüfer receives a fixed fee for continuous tax advice, in the absence of other written agreements, the work mentioned under paragraph 3 (d) and (e) will be charged separately.

5. Services with respect to special individual issues for income tax, corporate tax, business tax, valuation procedures for property and net worth taxation, and net worth tax as well as all issues in relation to sales tax, wages tax, other taxes and dues require a special engagement. This also applies to:

(a) the treatment of non-recurring tax matters, e. g. in the field of estate tax, capital transactions tax, real estate acquisition tax

(b) participation and representation in proceedings before tax and administrative courts and in criminal proceedings with respect to taxes, and

(c) the granting of advice and work with respect to expert opinions in connection with conversions of legal form, mergers, capital increases and reductions, financial reorganizations, admission and retirement of partners or shareholders, sale of a business, liquidations and the like.

6. To the extent that the annual sales tax return is accepted as additional work, this does not include the review of any special accounting prerequisites nor of the issue as to whether all potential legal sales tax reductions have been claimed. No guarantee is assumed for the completeness of the supporting documents and records to validate the deduction of the input tax credit.

12. Confidentiality towards third parties and data security

1. Pursuant to the law the Wirtschaftsprüfer is obliged to treat all facts that he comes to know in connection with his work as confidential, irrespective of whether these concern the client himself or his business associations, unless the client releases him from this obligation.

2. The Wirtschaftsprüfer may only release long-form reports, expert opinions and other written statements on the results of his work to third parties with the consent of his client.

3. The Wirtschaftsprüfer is entitled — within the purposes stipulated by the client — to process personal data entrusted to him or allow them to be processed by third parties.

13. Default of acceptance and lack of cooperation on the part of the client

If the client defaults in accepting the services offered by the Wirtschaftsprüfer or if the client does not provide the assistance incumbent on him pursuant to No. 3 or otherwise, the Wirtschaftsprüfer is entitled to cancel the contract immediately. The Wirtschaftsprüfer's right to compensation for additional expenses as well as for damages caused by the default or the lack of assistance is not affected, even if the Wirtschaftsprüfer does not exercise his right to cancel.

14. Remuneration

1. In addition to his claims for fees or remuneration, the Wirtschaftsprüfer is entitled to reimbursement of his outlays: sales tax will be billed separately. He may claim appropriate advances for remuneration and reimbursement of outlays and

make the rendering of his services dependent upon the complete satisfaction of his claims. Multiple clients awarding engagements are jointly and severally liable.

2. Any set off against the Wirtschaftsprüfer's claims for remuneration and reimbursement of outlays is permitted only for undisputed claims or claims determined to be legally valid.

15. Retention and return of supporting documentation and records

1. The Wirtschaftsprüfer retains, for seven years, the supporting documents and records in connection with the completion of the engagement — that had been provided to him and that he has prepared himself — as well as the correspondence with respect to the engagement.

2. After the settlement of his claims arising from the engagement, the Wirtschaftsprüfer, upon the request of the client, must return all supporting documents and records obtained from him or for him by reason of his work on the engagement. This does not, however, apply to correspondence exchanged between the Wirtschaftsprüfer and his client and to any documents of which the client already has the original or a copy. The Wirtschaftsprüfer may prepare and retain copies or photocopies of supporting documents and records which he returns to the client.

16. Applicable law

Only German law applies to the engagement, its conduct and any claims arising therefrom.

Special conditions for the increase of the liability under the general engagement terms as of 1 January 2002

The amounts of €4 million and €5 million, respectively, as provided for in No. 9, paragraph 2 of the General Engagement Terms are uniformly substituted by the amount of €5 million.

If, in the client's opinion, the foreseeable contractual risk will be considerably higher than €5 million, BDO Deutsche Warentreuhand Aktiengesellschaft will agree, at the client's request, to offer to the client an increased liability limit if and to the extent the liability insurance for the increased amount can be obtained from a German professional liability insurer. Upon the agreement of an increased liability limit, BDO Deutsche Warentreuhand Aktiengesellschaft is entitled to allow for the premium expense when determining the amount of its fees.

The above-mentioned provisions are not applicable when a greater or lesser liability limit has been provided by law for the respective professional service, particularly in connection with a statutory audit. In such a case the statutory liability regulations continue to be applicable.

If various causes of damage occur, BDO Deutsche Warentreuhand Aktiengesellschaft is liable within the scope of the increased liability limit only to the extent that causation can be attributed to BDO Deutsche Warentreuhand Aktiengesellschaft or its employees in relation to other causes relevant to the damage. This applies in particular in the case of a joint assignment with other

auditors. If, as agreed by the client, a third party is engaged for the execution of an assignment BDO Deutsche Warentreuhand Aktiengesellschaft will only be liable for negligence in connection with the selection of that third party.

BDO Deutsche Warentreuhand
Aktiengesellschaft
Wirtschaftsprüfungsgesellschaft

Annex II

	Part Section	Objects of expenditure	2007 Approved Budget	2007 Disbursement (as at 31/12/2007)	2007 Total expenditure (as at 31/12/2007)	Balance	Total exp./ appr. budget (percent age)	
1	A	**RECURRENT EXPENDITURE**						1
2	1	**Judges**	**2 128 280**	**2 000 744**	**2 000 744**	**127 536**		2
3		Annual allowances	1 360 000	1 328 460	1 328 460	31 540	97.68	3
4		Special allowances	359 800	314 868	314 868	44 932	87.51	4
5		Travel to Session	128 250	104 354	104 354	23 896	81.37	5
6		Judges' pension scheme	254 630	228 317	228 317	26 313	89.67	6
7		Common costs	25 600	24 745	24 745	855	96.66	7
8	2	**Staff costs**	**3 492 900**	**3 261 242**	**3 261 242**	**231 658**		8
9		Established posts	2 262 100	2 182 720	2 182 720	79 380	96.49	9
10		Common staff costs	995 950	851 045	851 045	144 905	85.45	10
11		Reimbursement of national taxes	15 000	25 563	25 563	-10 563	170.42	11
12		Overtime	19 500	18 884	18 884	616	96.84	12
13		Temporary assistance for meetings	105 250	104 472	104 472	778	99.26	13
14		General temporary assistance	60 550	50 891	50 891	9 659	84.05	14
15		Training	34 550	27 667	27 667	6 883	80.08	15
16	3	**Representation allowance**	**6 400**	5 570	**5 570**	**830**	87.03	16
17	4	**Official travel**	**88 800**	76 104	**76 104**	**12 696**	85.70	17
18	5	**Hospitality**	**6 750**	6 339	**6 339**	**411**	93.91	18
19	6	**Operating expenditures**	**1 318 318**	**1 212 364**	**1 212 364**	**105 954**		19
20		Maintenance of premises (incl. security)	967 668	902 964	902 964	64 704	93.31	20
21		Rental and maintenance of equipment	173 300	166 311	166 311	6 989	95.97	21
22		Communications	94 500	77 429	77 429	17 071	81.94	22

23		Miscellaneous services and charges (incl. bank charges)	19 750	13 878	13 878	5 872	70.27	23
24		Supplies and materials	59 350	48 032	48 032	11 318	80.93	24
25		Special services (external audit)	3 750	3 750	3 750	0	100.00	25
26	7	**Library and related costs**	**158 500**	**154 685**	**154 685**	**3 815**		26
27		Library — procurement of books and publications	113 700	112 560	112 560	1 140	99.00	27
28		External printing and binding	44 800	42 125	42 125	2 675	94.03	28
29								29
30	B	**NON-RECURRENT EXPENDITURE**						30
31	8	Furniture and equipment						31
32		Purchase of equipment	**75 000**	55 860	**55 860**	**19 140**	74.48	32
33	9	Alteration to premises	112 000	112 000	112 000	0	100.00	33
34								34
35	C	**CASE-RELATED COSTS**	**1 201 350**	**529 342**	**529 342**	**672 008**	44.06	35
36	10	**Judges**	**924 200**	**360 620**	**360 620**	**563 580**	39.02	36
37		Special allowances	744 250	310 278	310 278	433 972	41.69	37
38		Compensation to judges ad hoc	46 050	1 697	1 697	44 353	3.69	38
39		Travel to meetings, including judges ad hoc	133 900	48 645	48 645	85 255	36.33	39
40	11	**Staff costs**	**277 150**	**168 722**	**168 722**	**108 428**	60.88	40
41		Temporary assistance for meetings	254 650	147 163	147 163	107 487	57.79	41
42		Overtime	22 500	21 559	21 559	941	95.82	42
43	12	**Miscellaneous**	**0**	0	**0**	**0**		43
44								44
45	D	**WORKING CAPITAL FUND**	**0**	0	**0**	**0**		45
46								46
47	C	**TOTAL**	**8 588 298**	**7 414 250**	**7 414 250**	**1 174 048**	**86.33**	47

United Nations Convention on the Law of the Sea SPLOS/176

Meeting of States Parties

Distr.: General
26 March 2008

Original: English

Eighteenth meeting
New York, 13-20 June 2008

Appointment of Auditor for financial years 2009-2012

1. Pursuant to regulation 12.1 of the Financial Regulations of the International Tribunal for the Law of the Sea:

> The Meeting of States Parties shall appoint an Auditor, which may be an internationally recognized firm of auditors, an Auditor General or an official of a State Party with an equivalent title. The Auditor shall be appointed for a period of four years and its appointment may be renewed. The Tribunal may make proposals regarding the appointment of the Auditor.

2. In order to enable the Tribunal to make proposals regarding the appointment of an auditor, five internationally recognized firms of auditors with offices in Germany (BDO Deutsche Warentreuhand AG; Deloitte & Touche; KPMG; Ernst & Young; and PricewaterhouseCoopers) were contacted by the Registry. Four of the firms sent preliminary responses in November 2007. On that basis, in January 2008 the Registry sent a request for quotation (annex I) to those firms. The scope of audit (annex II) was also communicated to the firms. Since the Tribunal has no internal audit service, the request for quotation included a provision for an interim audit every two years, that is, in 2009 and 2011.

3. The four quotations received by the Registry are as follows:

Audit firm	*Total (including expenses, excluding VAT) 2009-2010*	*Total (including expenses, excluding VAT) 2011-2012*
BDO Deutsche Warentreuhand AG	€10 450	€10 450
Deloitte & Touche	€13 100	€13 800
Ernst & Young	Not submitted	
KPMG[a]	US$ 16 000	US$ 16 000
PricewaterhouseCoopers	€20 300	€21 300

[a] Estimated price does not include a provision for interim audits.

4. The Registry evaluated the above quotations, taking into account technical ability to perform the audit in accordance with generally accepted common auditing standards, the interest of the Tribunal and the best value for money.

5. On that basis, the Registry selected the following three quotations, which may be considered to meet the requirements of the Tribunal:

Audit firm	*Total (including expenses, excluding VAT) 2009-2010*	*Total (including expenses, excluding VAT) 2011-2012*
BDO Deutsche Warentreuhand AG	€10 450	€10 450
Deloitte & Touche	€13 100	€13 800
PricewaterhouseCoopers	€20 300	€21 300

6. The quotation from KPMG is not recommended since the price in the offer is only an estimate and does not include a provision for an interim audit.

7. An amount of €14,600 is contained in the draft budget proposals of the Tribunal for 2009-2010 for the 2009-2010 audit, on the basis of the average of the three quotations selected in paragraph 5 above (€7,300 envisaged for 2009 and €7,300 envisaged for 2010).

8. That the following Auditors were previously selected to conduct the audit of the financial statements of the Tribunal:

Financial periods	*Firm*	*Cost*
1996/1997	Arthur Andersen	US$ 13 000
1998	Arthur Andersen	US$ 13 000
1999	Arthur Andersen	US$ 13 000
2000	Arthur Andersen	US$ 13 000
2001	PricewaterhouseCoopers	US$ 13 100
2002	PricewaterhouseCoopers	US$ 13 400
2003	PricewaterhouseCoopers	€14 000
2004	Deloitte & Touche	€9 200
2005	BDO Deutsche Warentreuhand	€3 500
2006	BDO Deutsche Warentreuhand	€3 500
2007	BDO Deutsche Warentreuhand	€3 500
2008	BDO Deutsche Warentreuhand	€3 500

9. At its twenty-fifth session, the Tribunal examined the quotations and the evaluation done by the Registry and decided to transmit that information to the Meeting of States Parties for its consideration should the Meeting decide to appoint an internationally recognized firm of auditors as Auditor for the 2009-2010 and 2011-2012 financial periods.

Annex I

Request for quotation

The International Tribunal for the Law of the Sea is an independent international organization which was established by the United Nations Convention on the Law of the Sea and commenced its activities in October 1996. The Tribunal has a biennial budget of approximately €18 million.

We should be grateful if you would send us a quotation for performing audits for the Tribunal's 2009-2010 and 2011-2012 financial periods. In addition, we would appreciate receiving a quotation for interim audits of the financial records for 2009 and 2011, to be performed in March/April 2010 and March/April 2012.

The quotation should include all related costs, for example, travel, daily subsistence allowance, disbursements, and so on, and should be submitted to us by 30 January 2008. Furthermore, we should be grateful if you would advise us of your availability to undertake the audits at the end of January/early February in 2011 and 2013 in order for the audited financial statements to be presented at the administrative sessions of the Tribunal due to take place in March 2011 and March 2013. For your information, the Tribunal's financial year end is 31 December. The scope of the audit is enclosed with the present letter.

Should you require any clarification, please contact me at (040) 3560 7244 or at ndungu@itlos.org.

We look forward to your prompt response.

Yours sincerely,

(*Signed*) Florence **Ndungu**
Head of Budget and Finance
Officer-in-Charge of Administration

Annex II

Scope of audit

(a) Whether the financial statements of the Tribunal present fairly in all material aspects the financial situation of the International Tribunal for the Law of the Sea;

(b) Whether the expenses incurred during these financial periods are in accordance with the appropriations approved by the Meeting of States Parties;

(c) Whether expenditures incurred have been appropriately authorized by the party designated for that purpose in the Rules of the Tribunal or the Financial Regulations;

(d) Whether staff and persons being paid by the Tribunal have been recruited or engaged in the manner provided for in the Rules of the Tribunal or the Financial Regulations;

(e) Whether goods and services have been procured in accordance with the procedure provided for in the Financial Regulations;

(f) Whether goods and services which have been procured are necessary or not excessive, having regard to circumstances and the functions of the Tribunal.

Addendum

Annex to the Financial Regulations[a]

Additional terms of reference governing the audit of the International Tribunal for the Law of the Sea

1. The Auditor shall perform such audit of the accounts of the Tribunal, including all trust funds and special accounts, as it deems necessary in order to satisfy itself:

(a) That the financial statements are in accord with the books and records of the Tribunal;

(b) That the financial transactions reflected in the statements have been in accordance with these Regulations and the Financial Rules, the budgetary provisions and other applicable directives;

(c) That the securities and moneys on deposit and on hand have been verified by certificates received direct from the Tribunal's depositaries or by actual count;

(d) That the internal controls, including internal oversight, are adequate in the light of the extent of reliance placed thereupon.

2. The Auditor shall be the sole judge as to the acceptance in whole or in part of certifications and representations by the Registrar and may proceed to such detailed examination and verification as it chooses of all financial records, including those relating to supplies and equipment.

3. The Auditor and its staff shall have free access at all convenient times to all books, records and other documentation which are, in the opinion of the Auditor, necessary for the performance of the audit. Information which is classified as privileged and which the Registrar (or a designated senior official) agrees is required by the Auditor for the purposes of the audit and information classified as confidential shall be made available on application. The Auditor and its staff shall respect the privileged and confidential nature of any information so classified which has been made available and shall not make use of it except in direct connection with the performance of the audit. The Auditor may draw the attention of the Tribunal and the Meeting of States Parties to any denial of information classified as privileged which, in its opinion, was required for the purpose of the audit.

4. The Auditor shall have no power to disallow items in the accounts but shall draw the attention of the Registrar, for appropriate action, to any transaction for which it entertains doubt as to legality or propriety. Audit objections, to these or any other transactions, arising during the examination of the accounts shall be communicated immediately to the Registrar.

5. The Auditor (or such of its officers as it may designate) shall express and sign an opinion on the financial statements which shall read as follows:

> "We have examined the following appended financial statements, numbered ... to ..., properly identified, and relevant schedules of the International Tribunal for the Law of the Sea for the financial period ended 31 December .... Our

[a] SPLOS/120, annex.

examination included a general review of the accounting procedures and such tests of the accounting records and other supporting evidence as we considered necessary in the circumstances."

The opinion shall also state, as appropriate, whether:

(a) The financial statements present fairly the financial position as at the end of the period and the results of their operations for the period then ended;

(b) The financial statements were prepared in accordance with the stated accounting principles;

(c) The accounting principles were applied on a basis consistent with that of the preceding financial report;

(d) Transactions were in accordance with these Regulations and legislative authority.

6. The report of the Auditor on the financial operations of the Tribunal for the financial period shall be submitted to the Meeting of States Parties through the Tribunal. It shall indicate:

(a) The type and scope of the Auditor's examination;

(b) Matters affecting the completeness and accuracy of the accounts, including, where appropriate:

(i) Information necessary to the correct interpretation of the accounts;

(ii) Any amounts which ought to have been received but which have not been brought to account;

(iii) Any amounts for which a legal or contingent obligation exists and which have not been recorded or reflected in the financial statements;

(iv) Expenditures not properly substantiated;

(v) Whether proper books of accounts have been kept; where in the presentation of statements there are deviations of a material nature from the generally accepted accounting principles applied on a consistent basis, these should be disclosed;

(c) Other matters which the Auditor considers should be brought to the notice of the Meeting of States Parties, such as:

(i) Cases of fraud or presumptive fraud;

(ii) Wasteful or improper expenditure of the Tribunal's money or other assets, notwithstanding that the accounting for the transaction may be correct;

(iii) Expenditure likely to commit the Tribunal to further outlay on a large scale;

(iv) Any defect in the general system or detailed regulations governing the control of receipts and disbursements or of supplies and equipment;

(v) Expenditure not in accordance with the intention of the Meeting of States Parties after making allowance for duly authorized transfers within the budget;

(vi) Expenditure in excess of appropriations as amended by duly authorized transfers within the budget;

(vii) Expenditure not in conformity with the authority which governs it;

(d) The accuracy or otherwise of the supplies and equipment records as determined by stock-taking and examination of the reports;

(e) If appropriate, transactions accounted for in a previous period concerning which further information has been obtained or transactions in a later period concerning which it seems desirable that the Meeting of States Parties should have early knowledge.

7. The Auditor may make such observations with respect to its findings resulting from the audit and such comments on the Registrar's financial report as it deems appropriate to the Meeting of States Parties, the Tribunal or the Registrar.

8. Whenever the scope of audit of the Auditor is restricted, or whenever it is unable to obtain sufficient evidence, it shall refer to the matter in its opinion and report, making clear in the report the reasons for its comments and the effect on the financial position and the financial transactions as recorded.

9. In no case shall the Auditor include criticism in its report without first affording the Registrar an adequate opportunity of explanation on the matter under observation.

10. The Auditor shall not be required to mention any matter referred to in the foregoing that, in its opinion, is insignificant in all respects.